



Tulane Environmental Law Clinic

March 8, 2016

Via Certified Mail

Re: 187-001

John Tesvich
AmeriPure Processing Company, Inc.
30300 Hwy. 23 South
Buras, LA 70041

**Re: AmeriPure Processing Company, Inc.
803 Willow St., Franklin, LA 70538
Notice of Intent to File Citizen Suit for Unauthorized Discharge of Pollutant Into
Waters of the United States**

Dear Mr. Tesvich:

This letter on behalf of Mr. Darryl Bennett and Mrs. Penny Bennett gives notice of AmeriPure Processing Company, Inc.'s ("AmeriPure") unauthorized discharges of pollutants into waters of the United States that violate Clean Water Act § 301(a), 33 U.S.C. § 1311(a), and Clean Water Act § 307, 33 U.S.C. § 1317. Mr. and Mrs. Bennett hope that, on receiving this notice, AmeriPure will take action to resolve the intermittent and ongoing Clean Water Act violations described more fully below. We invite you to meet with us to reach an amicable resolution.

Factual Background

AmeriPure is an oyster processing plant located in Franklin, Louisiana. This notice concerns three categories of violation:

- AmeriPure is discharging oyster-processing waste liquids through an opening in the side of its building into a basin that flows into a storm drain and from there into Bayou Teche. *See Exhibits A and B*, which are photos of a basin at the plant filled with thick, black waste liquid.
- Additionally, AmeriPure is storing oyster shells and other materials associated with its oyster-processing functions in storage bins, trailers, and/or industrial trucks (*see Exhibit C*, which is a photo of AmeriPure's Storage), where oyster wastes flow onto the ground and, upon information and belief, discharge from there into the storm drains that flow into Bayou Teche. *See Exhibits D, E, F*, photos of the truck discharging to the ground.

- AmeriPure is also discharging oyster-processing waste into the City of Franklin's Publicly Owned Treatment Works ("POTW" or "sewerage system"), causing the POTW to violate its permit limits for BOD (biochemical oxygen demand), ammonia, and nitrogen.

AmeriPure's violations began by at least March 7, 2011, and are ongoing.

AmeriPure does not have a permit to discharge oyster-processing waste from its facility. On January 17, 2013, AmeriPure applied for a Louisiana Pollutant Discharge Elimination System ("LPDES") permit to discharge oyster-processing waste from its Franklin facility. See LDEQ's EDMS document number 8865540. The application requested a permit for two discharge sites: 1) for the discharge of oyster-processing waste into storm drains, and 2) for the discharge of processing waste into Franklin's sewerage system. On June 25, 2013, AmeriPure withdrew its permit application. See LDEQ's EDMS document number 8902357. In its application withdrawal, AmeriPure stated that it "made changes to [its] washwater plumbing and cooler evaporation water plumbing that directs those out-flows into the municipal sewer drains."

Recent events show that AmeriPure's discharge causes the Franklin POTW to violate its Clean Water Act permit. This is because the Franklin POTW's violations stopped when AmeriPure stopped operations in late June 2010 due to the Deepwater Horizon oil spill. AmeriPure's operations resumed in November 2010. See Bruce Watson, *Oil Spill Economics Trickle Down as Red Lobster Chain Stops Serving Oysters*, DAILY FINANCE (June 23, 2010 1:52 PM);¹ *AmeriPure Oyster Processor Restarts Operations*, FIS.COM (Nov. 18, 2010, 1:50 PM).² After AmeriPure resumed operations, the Franklin POTW's violations also resumed and the City of Franklin repeatedly violated permit limits for BOD (biochemical oxygen demand), ammonia, and nitrogen.

Mr. and Mrs. Bennett regularly suffer from AmeriPure's operations. They live at 210 Wall Street, Franklin, Louisiana. Their home is across Wall Street from AmeriPure's plant. They regularly suffer from a strong rotting odor that emanates from AmeriPure's oyster-processing waste discharges. Further, the area surrounding AmeriPure regularly floods two to three times a year, carrying AmeriPure's wastes into the neighborhood, onto the Bennetts' lawn and property, and into the surrounding storm drains. See Exhibits G and H, which are photographs of 210 Wall Street during flooding.

AmeriPure's Clean Water Act Violations

Under Clean Water Act § 301, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source into waters of the United States, except in compliance with a permit such as a permit under Clean Water Act § 402, 33 U.S.C. § 1342 and in compliance with Clean Water Act § 306 and 307, 33 U.S.C. §§ 1316-1317 (governing national standards of performance and pre-treatment

¹ [http://www.dailyfinance.com/2010/06/23/oil-spill-economics-trickle-down-as-red-lobster-chain-stos-serv/](http://www.dailyfinance.com/2010/06/23/oil-spill-economics-trickle-down-as-red-lobster-chain-stops-serv/)

² <http://www.fix.com/fis/worldnews/worldnews.asp?monthyear=&day=18&id=39283&I=e&special=&ndb=1%20target=>.

| | | | |
|------------------|-------------------|----------------------------|-------------------------|
| | BOD, carbonaceous | 106 lb/d qty. mo. avg. | 100 lb/d qty. mo. avg. |
| | | 10 mg/L qlty. mo. avg. | 5 mg/L qlty. mo. avg. |
| | | 13.5 mg/L qlty. wkly. avg. | 8 mg/L qlty. wkly. avg. |
| 4/1/10 – 4/30/10 | Nitrogen, Ammonia | 54 lb/d qty. mo. avg. | 40 lb/d qty. mo. avg. |
| | | 5.67 mg/L qlty. mo. avg. | 2 mg/L qlty. mo. avg. |
| | | 11.2 mg/L qlty. wkly. avg. | 4 mg/L qlty. wkly. avg. |
| | BOD, carbonaceous | 6.43 mg/L qlty. mo. avg. | 5 mg/L qlty. mo. avg. |

Relief Available

Mr. and Mrs. Bennett would prefer to resolve AmeriPure's violations without litigation. If Mr. and Mrs. Bennett file a citizen suit seeking compliance with the Clean Water Act, they will seek declaratory and injunctive relief and civil penalties. Under Clean Water Act § 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, a court may fine AmeriPure up to \$37,500.00 **per day for each violation** and order it to pay reasonable attorneys' fees and litigation costs.

Conclusion

Mr. and Mrs. Bennett bring their concerns to your attention and hope that they can be resolved without litigation. The Clean Water Act provides for a sixty-day waiting period before allowing suit in federal court. This waiting period gives the parties a reasonable time to resolve the matter cooperatively. If you have questions or concerns about this notice, or if you are interested in exploring a cooperative solution, please call undersigned counsel.

The name, address, and phone number of the people giving notice is:

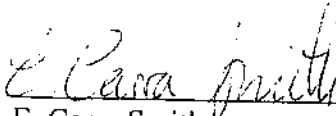
Darryl and Penny Bennett
210 Wall St.
Franklin, LA 70538
(337) 346-0266

Please direct all correspondence to counsel:

Machelle Lee Hall
Tulane Environmental Law Clinic
6329 Freret St., Suite 130
New Orleans, LA 70118
Tel. (504) 865-5789
Fax: (504) 862-8721

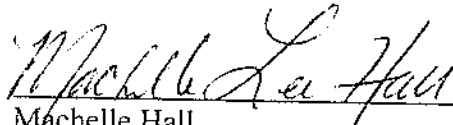
Notice of Violation
March 8, 2015
Page 8 of 8

Prepared by:



E. Carra Smith
Student
Tulane Environmental Law Clinic

Respectfully submitted by:



Machelle Hall
Tulane Environmental Law Clinic
6329 Freret Street, Suite 130
New Orleans, Louisiana 70118
Counsel for Darryl and Penny Bennett

cc: Gina McCarthy, EPA Administrator
Ron Curry, EPA Region 6, Regional Administrator
Dr. Chuck Brown, Secretary, LDEQ
Raymond Harris, Jr., Mayor of Franklin, Louisiana
Russel J. Cremaldi, Attorney, City of Franklin, Louisiana
Darryl Bennett & Penny Bennett



EXHIBIT

A



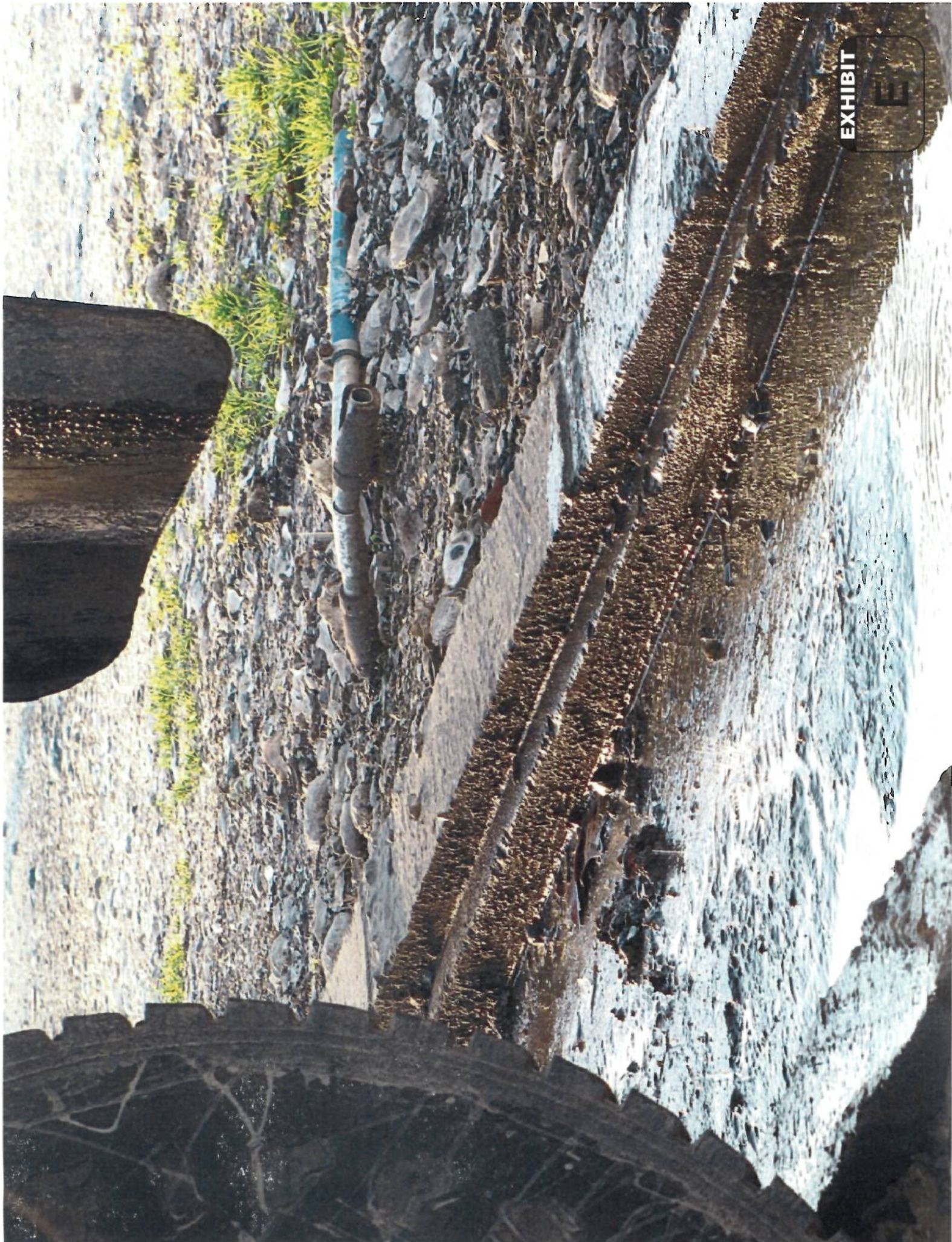
EXHIBIT

B



EXHIBIT

E





EXHIBIT

G





